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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/569,497	02/27/2006	Yoshiharu Kikusawa	541401-0325865 (SPO0004-U)	3454
909 7590 04/01/2009 PILLSBURY WINTHROP SHAW PITTMAN, LLP P.O. BOX 10500 MCLEAN, VA 22102			EXAMINER LEYSON, JOSEPH S	
			ART UNIT 1791	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/569,497	<b>Applicant(s)</b> KIKUSAWA, YOSHIHARU	
	<b>Examiner</b> JOSEPH LEYSON	<b>Art Unit</b> 1791	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-7 is/are rejected.
- 7) ☒ Claim(s) 5-7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/27/06</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Objections*

1. Claims 5-7 are objected to because of the following informalities:

for antecedent basis clarity, in claim 5, line 14, "that flow adjusting valves" should be amended such as "that said flow adjusting valves"; line 17, "the communication passage" should be amended such as "~~the~~ communication ~~passage~~ passages" (note passages in line 19); and line 18, "communicating the intermediate portion" should be amended such as "communicating ~~the~~ an intermediate portion";

for antecedent basis clarity, in claim 6, line 2, "that the inner and outer extrusion ports" should be amended such as "that ~~the~~ inner and outer extrusion ports"; and lines 4-5, "at the front end surface" should be amended such as "at ~~the~~ a front end surface"; and

for antecedent basis clarity, line 4, "the core material" should be amended such as "~~the~~ a core material"; and in claim 7, line 7, "to the front end opening" should be amended such as "to ~~the~~ a front end opening".

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 6 and 7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter

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which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 6 recites that the inner and outer extrusion ports are open at the front end surface of the die and separately from each other, which is not originally disclosed (i.e., by the parent PCT and foreign applications). This subject matter was introduced by the preliminary amendment filed on February 27, 2006.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites "In an extrusion molding apparatus for a resin tube, with said die (11) formed with a through-hole (24) longitudinally extending through said die (11) and extending inwardly of said inner layer tube molding passage (9), said tube (2) being externally fitted on the core material (25) forwardly passing through said through-hole (24), an extrusion molding apparatus for a resin tube as set forth in Claim 6," which is indefinite. Claim 6 does not set forth the die being (11) formed with a through-hole (24) longitudinally extending through said die (11) and extending inwardly of said inner layer tube molding passage (9), said tube (2) being externally fitted on the core material (25) forwardly passing through said through-hole (24), and thus it is not clear whether such limitations are being positively claimed in claim 7.

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***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guillemette (US 5,853,770) in view of Yanagawa et al. (US 6,634,878).

Guillemette (US 5,853,770) discloses an extrusion molding apparatus for a resin tube, comprising a plurality of extruders (i.e., col. 3, lines 28-34) for thermally melting and extruding resins of different kinds, and a die 20 provided with an inner layer tube molding passage A' for forwardly passing therethrough the resin extruded from one extruder of these extruders to enable the molding of an inner layer tube, an outer layer tube molding passage B' for forwardly passing therethrough the resin extruded from the other extruder to enable the molding of an outer layer tube which is to be externally fitted integrally on said inner layer tube, said die 20 enabling the molding of a multi-layer tube by these inner and outer layer tubes, said die 20 being formed with inflow passages 37, 38 enabling the resins extruded from said extruders to flow into the respective rears of said tube molding passages A', B', inner and outer extrusion ports 35, 36 constituting the respective front ends of said inner and outer layer tube molding passages A', B' being disposed radially close to each other and are opened at a front end surface of the die and separately from each other (i.e., figs. 2 and 3), said die 20 being formed with a through-hole 25, 31 longitudinally extending through said die 20

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and extending inwardly of said inner layer tube molding passage A', said tube being externally fitted on a core material forwardly passing through said through-hole 25, 31 (i.e., col. 3, lines 9-12), and wherein said inner extrusion port 35 of said inner layer tube molding passage A' is disposed close to the front end opening 34 radially constituting the front end of said through-hole 25, 31. However, Guillemette (US 5,853,770) does not disclose the flow adjusting valves, as recited by the instant claims.

Yanagawa et al. (US 6,634,878) discloses an extrusion molding apparatus including a die 1 having molding passages fed by inflow passages (i.e., figs. 1, 4, 6) and flow adjusting valves (i.e., 19, 29, 43, 56) making adjustable the respective flows per unit time of resins flowing through said inflow passages, said flow adjusting valves make openable/closable communication passages for communicating an intermediate portion of said inflow passages to outside said die 1, and said flow adjusting valves enable the adjustment of the respective degrees of opening of said communication passages (i.e., figs. 1-2B, 4-6; col. 6, line 26, to col. 12, line 25).

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the apparatus of Guillemette (US 5,853,770) with flow adjusting valves, as disclosed by Yanagawa et al. (US 6,634,878), because such a modification would enable flow control of material into the molding passages.

### ***Double Patenting***

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

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from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 5-7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3 and 4 of copending Application No. 10/569,498 in view of Yanagawa et al. (US 6,634,878). Claims 1, 3 and 4 of copending Application No. 10/569,498 disclose the apparatus substantially as claimed, except for the flow adjusting valves, as recited by the instant claims.

Yanagawa et al. (US 6,634,878) is applied as above. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the apparatus of claims 1, 3 and 4 of copending Application No. 10/569,498 with flow adjusting valves, as disclosed by Yanagawa et al. (US 6,634,878), because such a modification would enable flow control of material into the molding passages.

This is a provisional obviousness-type double patenting rejection.

10. Claims 5-7 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 7,500,842 in view of Guillemette (US 5,853,770) and Yanagawa et al. (US 6,634,878). Claims 1-4 of U.S.

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Patent No. 7,500,842 disclose the apparatus substantially as claimed, except for the flow adjusting valves making openable/closable communication passages, for the inner and outer extrusion ports opened at the front end surface and separately from each other, or for a through-hole, as recited by the instant claims. Guillemette (US 5,853,770) and Yanagawa et al. (US 6,634,878) are applied as above. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the valves of claims 1-4 of U.S. Patent No. 7,500,842 to make openable/closable communication passages, as disclosed by Yanagawa et al. (US 6,634,878), because such a modification would enable flow control of material to outside the die; and/or to further modify the apparatus with the inner and outer extrusion ports being opened at the front end surface and separately from each other and/or with a through-hole, as disclosed by Guillemette (US 5,853,770), because such an arrangement of the inner and outer extrusion ports is well known and conventional in the art and/or because such a through-hole would enable core material to receive the multilayer tube thereon.

This is a provisional obviousness-type double patenting rejection.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Starnes, Jr. (US 5,156,715) is cited as of interest.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH LEYSON whose telephone number is (571)272-5061. The examiner can normally be reached on M-F 9AM-5:30PM.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gupta Yogendra can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert B. Davis/  
Primary Examiner, Art Unit 1791

/J. L./  
Examiner, Art Unit 1791